APPENDIX A.

Opinion of the Illinois Supreme Court.

Docket No. 40661—Agenda 22—January, 1968.

Charles Louis, Appellee, v. Louis Barenfanger, d/b/a Barenfanger Construction Company, Appellant.

Mr. Justice Klingbiel delivered the opinion of the court:

On July 7, 1956, Charles Louis, a workman employed by a subcontractor in the construction of a school building, sustained injuries when he fell from the place where he was working. He filed complaint against the general contractor, alleging violations of the Structural Work Act (Ill. Rev. Stat. 1955, chap. 48, pars. 60 *et seq.*). On motion by defendant the third amended complaint was dismissed for failing to state a cause of action, and plaintiff appealed to the appellate court. That court reversed, remanding the cause for further proceedings (81 Ill. App. 2d 104), and we have granted defendant's petition for leave to appeal. The question is whether the complaint alleges a cause of action under the statute.

Section 1 of the Structural Work Act says "That all scaffolds, hoists, cranes, stays, ladders, supports, or other mechanical contrivances, erected or constructed by any person, firm or corporation in this State for the use in the erection, repairing, alteration, removal or painting of any house, building, bridge, viaduct, or other structure, shall be erected and constructed, in a safe, suitable and proper manner, and shall be so erected and constructed, placed and operated as to give proper and adequate protection to the life and limb of any person or person employed or engaged thereon, or passing under or by the same, and in such manner as to prevent the

falling of any material that may be used or deposited thereon" (Ill. Rev. Stat. 1955, chap. 48, par. 60). Section 9 provides in part that any person injured as a result of a wilful violation of the Act is given a right of action for damages. Ill. Rev. Stat. 1955, chap. 48, par. 69.

Insofar as it is relevant the complaint alleges that defendant knowingly permitted a support, stay, or other mechanical contrivance to be used in the construction of said building, when said support, stay or other mechanical contrivance was not so erected, constructed and placed as to give proper and adequate protection to the life and limb of the plaintiff and that its component parts were too far apart and of insufficient width to give proper footing. It is further alleged, in a separate paragraph, 8 D, that planking type scaffolds used in constructing the building "were not so placed as to give proper and adequate protection to the life and limb of the plaintiff and other persons employed or engaged thereon." The complaint then alleges that "as a direct and proximate result of the defendant's failure to comply with the provisions of the aforesaid Statute in one or more of the foregoing respects, the plaintiff fell from the place where he was working." The defendant demanded a bill of particulars with regard to the allegations of paragraph 8 D, in response to which plaintiff stated that he was not standing on a planking type scaffold when he fell, because none was properly placed for his use.

Arguing on the basis of facts nowhere alleged in the complaint or bill of particulars, defendant says that an integral part of a building under construction does not constitute a scaffold or support within the meaning of the Act, and that since the plaintiff by the bill of particulars admits he was not using a "planking type scaffold" his fall had no connection with any of the devices mentioned in the Act. The narrow question presented on this appeal

is whether the complaint ought to have been dismissed in view of the bill of particulars and whether the failure to provide a scaffolding is a violation of the Act. In determining this issue, we must be mindful that we have construed the objective of this Act as to provide protection to workmen engaged in extrahazardous work. *Schultz v. Ericsson Co.*, 264 Ill. 156, 165; *Gannon v. Chicago, Milwaukee, St. Paul and Pacific Railway Co.*, 22 Ill. 2d 305, 317, 318; *Larson v. Commonwealth Edison Co.*, 33 Ill. 2d 316, 322.

As we noted in the *Gannon* case: "[In considering] the construction of this act, we must apply the legal axiom that the words of a statute should be construed to give effect to the legislative intention, which must be ascertained not only from the language of the entire act, but from the evil to be remedied and the object to be attained.

* * * * * * *

"* * * As its title signifies, the Scaffold Act endeavored to give protection to workmen engaged in structural work by requiring certain standards for such work, and by providing both criminal penalties and civil liability for failure to comply therewith. The statutory purpose, as interpreted in the early *Schultz case* [citation] was 'to prevent injuries to persons employed in this dangerous and extrahazardous occupation, so that negligence on their part in the manner of doing their work might not prove fatal.' "

Certainly, the failure to furnish a scaffold could be actionable at common law in many negligence situations. Thus, it is well-established that a general contractor in control of premises must furnish the employees of subcontractors a safe place to work. See 20 ALR 2d 873. To hold that the failure to furnish a scaffold would not be actionable under this Act would, as we noted in *Larson v. Commonwealth Edison Co.*, 33 Ill. 2d 316, 325, produce

"the absurd result * * * that a statute designed to broaden the common-law duty and to give added protection, would be construed as imposing a lesser duty than the common law."

From a realistic viewpoint, if the failure to provide scaffolding would not be actionable under this statute, then every person to whom the Act was directed could defeat its purpose by simply failing to provide a scaffold, stays or supports.

Accordingly, we hold that the failure to provide scaffolding can be the basis of a cause of action under the Structural Work Act.

Another question urged is whether a permanent structure, used as a stay or temporary support, because of its permanent character, excluded from the Act. The Act itself nowhere excludes, expressly or impliedly, from its broad coverage permanent structures.

In *Schultz v. Ericsson Co.*, 264 Ill. 156, 164, we carefully noted: "No attempt is made to define what shall be considered or shall constitute a safe, suitable and proper scaffold, which, from the very nature of things, could not well be done, for what might be a safe, suitable and proper scaffold for one kind of work under one set of conditions or circumstances would be wholly inadequate, insufficient and unsafe for doing another kind of work under other conditions or circumstances and at a different height from the ground. Consequently the legislature has not attempted to define what shall constitute a safe, suitable and proper scaffold but has cast the burden of constructing safe, suitable and proper scaffolds upon the employer, and he cannot escape liability for injuries sustained by reason of his failing to furnish such scaffolds by pleading ignorance of their dangerous condition when the conditions are known to him."

Thus, an airplane hangar door (*Skinner v. United States*, 209 F. Supp. 424); an overhead crane which ran the length of a steel mill (*Bounougias v. Republic Steel Corp.* (7th Cir.), 277 F. 2d 726); a shovel extension mounted on a tractor (*Oldham v. Kubinski*, 37 Ill. App. 2d 65); a plank laid across a concrete form (*Frick v. O'Hare-Chicago Corp.*, 70 Ill. App. 2d 303), have all been held scaffolds under the facts in those cases.

The Wisconsin Supreme Court in *Koepp v. National Enameling and Stamping Company*, 151 Wis. 302, 139 N. W. 179, interpreted a statute similar to our own and said at p. 184: "Much that has been said respecting 'repairing' applies to 'scaffolding' and 'mechanical contrivance.' The scope thereof would reasonably include any temporary structure made up of parts, viewing the term in its broadest scope, used for support while doing any kind of work mentioned in the law,—any kind of an elevated platform for workmen to use in the performance of their duties. Any combination for use in doing any kind of work mentioned in the statute where the servant is dependable thereon for support, in place of an ordinary surface, such as the ground or floor, is a mechanical contrivance. The Legislature, in the combination of words, 'scaffolding, hoists, stays, ladders or other mechanical contrivance,' viewed in a broad remedial sense in favor of employees, left little, if anything, uncovered which may be used in the work mentioned, where required to be done beyond the reach of one standing on an ordinary surface." 151 Wis. at 314, 315, 139 N. W. at 184.

The 1967-1968 supplement to 35 Am. Jur., Master and Servant, par. 195, p. 625, states: "Where the device being used as a scaffold was, or was intended to be, a permanent part of the structure being worked upon, the rule seems to be that if the apparatus in question was being put to a temporary use as a support for workmen at the time of the accident, it is a scaffold, regardless of its ultimate use

as a part of the permanent structure. (See Anno: 87 A. L. R. 2d 983.) Another criterion used by courts to determine whether a particular structure is a scaffold is the element of danger involved in its use and whether this was the danger which the legislature was attempting to alleviate in enacting the statute requiring safe scaffolds."

We have considered *Bohannon v. Joseph T. Ryerson & Son, Inc.*, 72 Ill. App. 2d 397; *Parizon v. Granite City Steel Co.*, 71 Ill. App. 2d 53; *Schaffer v. Veach*, 61 Ill. App. 2d 168, and *Bradley v. Metropolitan Sanitary Dist.*, 56 Ill. App. 2d 482, but in view of what we have held do not consider them controlling.

The appellate court was correct insofar as it reversed the judgment of the circuit court and remanded the cause for further proceedings. The judgment of the appellate court is affirmed and the cause is remanded for further proceedings not inconsistent with the views herein expressed.

Judgment affirmed and cause remanded.

Mr. Justice Underwood, dissenting:

It is not disputed that plaintiff fell while walking along a series of metal girders known as long span steel joists and T-rails and that these formed a permanent and integral part of the building under construction. The opinion of a majority of my colleagues extending the scope of the Structural Work Act to impose a duty to erect scaffolding and to include as such the integral and permanent portions of buildings is a substantial departure from the heretofore consistent interpretations of that Act to the contrary.

The third amended complaint in this case was dismissed as failing to state a cause of action. The sole question before us is the correctness of this ruling. The complaint is clearly based upon the statute and alleges no comomn-law

duties or breaches. Nor does it allege that defendant owed a statutory duty to plaintiff to erect scaffolding and it seems to me clear that no such duty is imposed by the Structural Work Act which the complaint quotes. Unless such duty is statutorily imposed or the permanent portions of the building are included within the term "scaffolds", the trial court's action was correct.

The court's opinion holds the Act creates a statutory duty to erect scaffolds and relies upon general language in our decisions indicating the purpose of this legislation was to protect those engaged in structural work. Certainly that is its purpose, and the purpose is a laudable one, but quoting generalities to indicate that the result achieved by the majority opinion is a desirable one does little to resolve the specific questions presented: (1) Does our statute impose a duty to erect scaffolding in addition to the contractor's common-law obligation to provide a reasonably safe place to work? (2) If so, does a permanent, integral part of the building under construction qualify as a "scaffold" within the statutory meaning? To support its affirmative answer to the first of these, the majority cite, in addition to the generalities in *Schultz* and *Gannon,* only *Larson v. Commonwealth Edison Co.,* 33 Ill. 2d 316, which dealt with the question as to whether certain defendants were "in charge of" the work. The injured workman in *Larson* fell from the ordinary type of scaffold, and the problems presented by this case were not before us in *Larson;* it is not authority for the result here reached by the court. The A. L. R. annotation (20 A. L. R. 2d 873) deals with the common-law duty of the contractor and specifically refers the reader to the statutes of his State in order to determine whether this principle is embodied therein.

Section 1 of our statute provides: "All scaffolds, hoists, cranes, stays, ladders, supports, or other mechanical con-

trivances, erected or constructed by any person * * * for the use in the erection, repairing, alteration, removal or painting of any house, building * * * shall be erected and constructed, in a safe, suitable and proper manner, and shall be so erected and constructed, placed and operated as to give proper and adequate protection to * * * persons employed or engaged thereon, * * * as to prevent the falling of any material * * * used or deposited thereon." (Ill. Rev. Stat. 1955, chap. 48, par. 60.) It has been uniformly held that "section 1 of the Act does not undertake to state when or under what conditions a scaffold is to be erected as a matter of statutory duty" (*Parizon v. Granite City Steel Co.*, (4th dist.), 71 Ill. App. 2d 53, pp. 60-61, leave to appeal denied 35 Ill. 2d 629; see, also, *Schaffer v. Veach* (4th dist.), 61 Ill. App. 2d 168; *Bradley v. Metropolitan Sanitary District* (1st dist.), 56 Ill. App. 2d 482), and as earlier noted the complaint before us does not allege that defendant owed plaintiffs such duty. Plaintiff now argues that the use of the word "placed" in the statute manifestly imposes a duty upon the contractor to erect scaffolds, but it seems to me clear that, when read in the context of the Act, "placed" is referring to the method of constructing the supports, stays or scaffolds rather then the necessity of providing them. The Act defines the standards for constructing these mechanical contrivances but it does not purport to say when and where they must be furnished. This has, until now, been the uniform holding of the appellate courts. *Parizon*, pp. 60-61; *Schaffer; Bradley.*

Turning, then, to the question whether permanent, integral parts of the structure being built may qualify as a "scaffold" or "support", the statutory language and decisions in this State are equally persuasive that they cannot. The pertinent portions of the statute are quoted above, and the Act does not further define scaffold or its other terms. However, the common definitions of a scaf-

fold are unanimous in their reference to its temporary character. Webster's Third New International Dictionary defines a scaffold as a "temporary or movable platform * * *", the Shorter Oxford English Dictionary says a scaffold is "a temporary platform * * *", and Webster's New World Dictionary of American Language defines it as "a temporary wooden or metal framework * * *".

As pointed out in *Parizon v. Granite City Steel Co.* (4th dist.), 71 Ill. App. 2d 53, 61, "The connotation of the operative words, '* * * erected or constructed * * * for the use in the erection, repairing * * *;' is that of a temporary erection for the express specific purpose of construction. The concept of the erection for such specific purpose is substantiated in the provisions of section 4 of the Act (Ill. Rev. Stat. 1965, chap. 48, par. 63). It provides for inspection of scaffolding and the several items specified in the statute by the Director of Labor or the local authorities of municipalities charged with the duty of enforcing 'Building Laws.' This section provides that if upon inspection such scaffolding or the companion items are found dangerous to life or limb, the authorities should notify the person responsible for the erection or maintenance, prohibit the use thereof, and the person responsible is required to remove the scaffolding or platform." Such statutory provisions are scarcely consonant with this court's present extension of the statute to embrace permanent and integral portions of the buildings being worked upon.

The majority again quotes general language, this time in *Schultz v. Ericsson Co.*, 264 Ill. 156, which, it seems to me, has no real relevance to the issues here. In *Schultz* the workman was injured while walking along a runway built upon temporary scaffolding alongside the building, and the court was in no way concerned with the questions now before us. The majority also cite *Skinner v. United*

States, 209 F. Supp. 424; *Bounougias v. Republic Steel Corp.* (7th Cir.), 277 F. 2d 726; *Oldham v. Kubinski,* 37 Ill. App. 2d 65; and *Frick v. O'Hare-Chicago Corp.,* 70 Ill. App. 2d 303. Of these, the only case involving anything which could be thought to be a permanent part of the building under construction is *Skinner.* There the workman was killed when the *ladder* upon which he was standing was caused to fall by the movement of the airplane hangar door against which the ladder was placed. The court there specifically found that "placement of the ladder against a movable door constituted an unsafe condition" and that a "suitable scaffold was available and could have been used in lieu of the ladders." Since the Act refers to "ladders" as one of the types of mechanical contrivances included therein, I do not understand how *Skinner* can be viewed as authority for extending the Act to embrace permanent, integral parts of the building.

Nor does the Wisconsin case, *Koepp v. National Enameling and Stamping Co.,* 151 Wis. 302, 139 N. W. 179, quoted at length in the majority opinion, strengthen their position. In that case the injured employee was standing upon an 11-foot ladder placed on a raised platform some 20 feet above the floor and fell when the platform supports collapsed—obviously within the statutory reference to "ladders" and "supports". It is noteworthy that the court there stated the scope of the terms "scaffolding" and "mechanical contrivance" would reasonably include "any *temporary* structure made up of parts * * * used for support while doing any kind of work mentioned in the law—any kind of an elevated platform for workmen to use in the performance of their duties." (Emphasis added.)

The final authority relied on by the majority, 35 Am. Jur., par. 195, cites to 87 A. L. R. 2d 983 as its source. That annotation refers to *Carpenter v. Burmeister,* 217

Mo. App. 104, 273 S. W. 418, and *Ross v. Delaware, L. & W. R. Co.*, 231 N. Y. 335, 132 N. E. 108, as holding that permanent parts of buildings may be scaffolds. However, the facts in those cases were that workmen were injured while walking upon loose planks laid across joists so that employees could walk across them. While it was intended that such planks would ultimately be nailed down (to the roof in *Carpenter*) and become permanent parts of the structure, it was precisely the fact *that they had not been permanently affixed* that caused the courts in *Ross* and *Carpenter* to hold them a scaffold.

The reason for the majority's inability to cite more persuasive authority is clear. The decisions of our appellate courts dealing with permanent parts of buildings are uniformly to the contrary.

A rather thorough review of the pertinent Illinois authorities, as well as some from other jurisdictions, appears in the majority and dissenting opinions of the 4th District Appellate Court members in *Parizon v. Granite City Steel Co.*, 71 Ill. App. 2d 53. It would only prolong this dissent to restate them here. Shortly stated, that case turned squarely upon the court's interpretation of the statute as excluding permanent and integral parts of the building from the term "scaffolds", and as creating no duty to erect a scaffold. We denied leave to appeal at the January, 1967, term (35 Ill. 2d 629), as we also did in *Bohannon v. Joseph T. Ryerson & Son, Inc.* (1st dist.), 72 Ill. App. 2d 397, which expressly chose to follow *Parizon*. The appellate courts, with the exception of the case before us, have been uniform in their interpretation of the Structural Work Act to exclude permanent and integral parts of the structure *Parizon; Ryerson; Bradley v. Metropolitan Sanitary District*, 56 Ill. App. 2d 482; *Thon v. Johnson*, 30 Ill. App. 2d 317; *Miller v. DeWitt*, 59 Ill. App. 2d 38, affd. 37 Ill. 2d 273.

We have heretofore left undisturbed those cases in which the appellate courts have held that permanent integral parts of the structures being worked upon were not within the scope of the Structural Work Act and that no affirmative duty was thereby imposed to erect scaffolding in addition to such obligation as may have theretofore existed. This, it seems to me, is the plain meaning of the statutory language. It may be desirable to extend or enlarge the statutory duty, but, if so, that result should be accomplished by legislative amendment and not by judicial fiat.

Since the complaint did not, in my opinion, state a cause of action, I would reverse the appellate court and affirm the circuit court.

Mr. Justice House joins in this dissent.

APPENDIX B.

Opinion of the Appellate Court for the Fifth Judicial District of Illinois.

No. 66-61.

In the
Appellate Court of Illinois,
Fifth District.

Charles Louis,
Plaintiff-Appellant,
vs.
Louis Barenfanger, d/b/a Barenfanger Construction Company,
Defendant-Appellee.

Appeal from the Circuit Court of Marion County. Honorable Daniel H. Dailey, Judge Presiding.

Honorable Daniel H. Dailey, Judge Presiding.

Opinion as Modified on Rehearing.

Goldenhersh, J.

Plaintiff appeals from the judgment of the Circuit Court of Marion County entered upon allowance of a motion to dismiss plaintiff's third amended complaint.

Plaintiff's third amended complaint, as further amended by interlineation, alleges that defendant was a general contractor engaged in the erection of a school building, that defendant had charge of the erection of the building and all scaffolds, stays and supports used thereon, that all scaffolds, stays and supports mentioned, except for the scaffold mentioned in paragraph 8 D., were to remain in place and become a part of the building, that plaintiff was employed by a subcontractor engaged in part of the construction job.

The Complaint further alleges that sections 60 and 69 of Chapter 48, Ill. Rev. Stat. 1955, were then in force and effect and it was defendant's duty to comply with the provisions thereof. Paragraph 8 alleges that defendant wilfully or knowingly failed to comply with the provisions of the Structural Work Act in various respects. A motion to strike paragraphs 8 A., 8 B., and 8 C. was allowed prior to the filing of the motions hereinafter discussed. In paragraph 8 D. plaintiff charges violation of the statute "By knowingly permitting one or more planking type scaffolds to be used in the construction of said building, the said scaffolds were not so placed as to give proper and adequate protection to the life and limb of the plaintiff and other persons employed or engaged thereon."

Defendant filed a motion attacking section 8 D. praying that plaintiff be required to plead additional facts, or in the alternative the cause be dismissed, and also filed a motion for a bill of particulars. Plaintiff's motion for denial of a bill of particulars was overruled, and a bill of particulars was filed. In the bill of particulars plaintiff states that the planking type scaffolds referred to in the complaint consisted of boards laid across "I" beams, which boards had been furnished by defendant. Plaintiff further states that he was not standing on a plank type scaffold at the time that he fell, for the reason that the scaffolds were not properly placed for his use, that he did not know the location of the scaffolds at that time, and that employees of the defendant had "placed or misplaced" the scaffolds.

The trial court allowed defendant's motion and dismissed the case. This appeal followed.

Although the exact basis for dismissal cannot be determined from the order entered by the circuit court, the parties have briefed and argued the following proposi-

tions. Plaintiff contends (a) that the Structural Work Act is designed to include not only scaffolds, but hoists, cranes, stays, ladders, supports, or "other mechanical contrivances"; (b) that a scaffold, by definition, is temporary, but a support, if it is furnished for use, and used, as a support during the course of construction falls within the purview of the Structural Work Act, although it may be a part of the permanent structure, (c) that if defendant knowingly permitted planks to be used in the construction work, and at the time of plaintiff's injury the planks were not so placed as to give proper and adequate protection to the life and limb of the plaintiff, defendant is in violation of the statutory requirement for proper placement of supports or scaffolds.

Defendant contends (a) that a permanent part of a building is not a scaffold or support within the meaning of the Structural Work Act, (b) that the fact that a workman chooses to walk on an integral permanent part of a structure does not make that part of the building a scaffold or support within the meaning of the Structural Work Act, (c) that the Structural Work Act does not require a contractor to furnish a scaffold or support to an employee of a sub-contractor, (d) that the Structural Work Act does not confer upon a contractor the power, nor place upon him the duty, to prohibit an employee of a sub-contractor from walking on an integral part of a building under construction, (e) the fact that a contractor might have used a scaffold at some stage of construction, does not thereafter impose upon him the duty to place a scaffold for every other operation conducted by a sub-contractor's employee.

In determining the sufficiency of a complaint when attacked by a motion to strike or dismiss, the facts well pleaded must be taken as true. Acorn Auto Driving School, Inc. v. Board of Education, 27 Ill. 2d 93, 187

N. E. 2d 722. The bill of particulars furnished upon the demand of the defendant should be deemed a part of the third amended complaint to which it relates (McDonald v. The People, 126 Ill. 150; O'Leary v. The People, 88 Ill. App. 60; Sterling-Midland Coal Company v. Ready & Callaghan Coal Company, 236 Ill. App. 403), and for purposes of the motion, it is therefore admitted that defendant had charge of the erection of the building and of all scaffolds, stays, and supports used in the construction work, the defendant had furnished, and knowingly permitted the use of one or more planking type scaffolds, and that the proximate cause of plaintiff's injury was the failure to properly place these scaffolds.

Defendant refers this court to plaintiff's first amended complaint for the "basic facts as to how plaintiff fell". That complaint was dismissed, and by leave of court plaintiff has filed his third amended complaint. The third amended complaint makes no reference to any other complaint, and for the purposes of the motion attacking it, is neither aided nor impaired by any prior pleading. Bowman v. County of Lake, 229 Ill. 2d 268.

In support of the court's action in dismissing the third amended complaint, defendant makes repeated reference to plaintiff's testimony taken by discovery deposition. Defendant has not cited, nor has this court found any authority for the use of a discovery deposition in support of a motion based upon either sections 42 or 45 of the Civil Practice Act, upon which sections defendant's motions purports to be based. In view of the holdings of the Supreme Court that except as provided in section 48 of the Civil Practice Act, the disposition of a motion to dismiss must be made upon the allegations contained in the complaint, we hold that the deposition is not properly to be considered in determining the sufficiency of the third amended complaint. Mutual Tobacco Co. v. Halpin, 414 Ill. 226; Hansen v. Raleigh, 391 Ill. 536.

As stated in Thon v. Johnson, 30 Ill. App. 2d 317, "There is little authority in Illinois as to what does and what does not constitute a scaffold within the meaning of the statute," and whether an object or instrumentality is a scaffold or support must be determined on the facts in each case. Thus an overhead crane (Bounougias v. Republic Steel Corporation, 277 F. 2d 726), a shovel extension mounted on a tractor (Oldham v. Kubinski, 37 Ill. App. 2d 65, 185 N. E. 2d 270), and a plank laid across a concrete form (Frick v. O'Hare-Chicago Corporation, 70 Ill. App. 2d 303, 217 N. E. 2d 552) were held to be scaffolds under the facts presented in those cases. If, as alleged in the complaint, planks, or "planking type scaffolds" were furnished for use in the construction of the building, as a place for plaintiff to work, they were "scaffolds" or "supports" within the contemplation of the Structural Work Act.

Defendant argues that the Structural Work Act does not apply because "plaintiff was not using a 'scaffold, hoist, crane, stay, ladder or other mechanical contrivance' when he fell." As above stated, the plaintiff, in his bill of particulars, alleges that he was not standing on a scaffold when he fell, for the reason that the planking type scaffold or supports were not properly placed for his use. The statute upon which plaintiff relies provides that scaffolds and supports "shall be so erected and constructed, placed and operated . . .." Obviously the failure to properly place a scaffold or support is as much an actionable violation of the Structural Work Act as is the failure to properly construct, erect or operate a scaffold or mechanical contrivance.

The Civil Practice Act provides that pleadings shall be liberally construed with a view to doing substantial justice between the parties (Ch. 110, sec. 33 (3), Ill. Rev. Stat. 1965). In Miller v. DeWitt (Docket No. 39428), in reviewing the trial court's ruling in dismissing a third

party complaint, the Supreme Court, speaking through Mr. Justice Underwood, said "The trial court should not have dismissed the third-party complaint unless it appears from the pleadings that in no event would the architects have an action over against the contractor." We understand this language to hold that a cause of action should not be dismissed on the pleadings unless it clearly appears that no set of facts can be proved under the pleadings, which will entitle the plaintiff to recover. Applying this rule to the third amended complaint, as amended, the dismissal of the cause was error. We do not further discuss the many contentions briefed and argued by the parties for the reason that they do not, at this time, present issues for decision. Mahin v. Baltis, 34 Ill. 2d 413, 216 N. E. 2d 132.

For the reasons stated, the judgment of the Circuit Court of Marion County is reversed and the cause remanded for further proceedings not inconsistent with this opinion.

Judgment reversed and cause remanded.

Concur: George J. Moran
Concur: Edward C. Eberspacher

Publish in Full.

Filed
Apr. 10, 1967
James R. McLaughlin
Clerk of the Appellate Court
Fifth District of Illinois

APPENDIX C (a).

Illinois Structural Work Act, 1955 Illinois Revised Statutes, Chapter 48, Sections 60, 64, 65 and 69.

60. Scaffolds, cranes, ladders, etc.—Erection and construction.] § 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*: That all scaffolds, hoists, cranes, stays, ladders, supports, or other mechanical contrivances, erected or constructed by any person, firm or corporation in this State for the use in the erection, repairing, altering, removal or painting of any house, building, bridge, viaduct, or other structure, shall be erected and constructed, in a safe, suitable and proper manner, and shall be so erected and constructed, placed and operated as to give proper and adequate protection to the life and limb of any person or persons employed or engaged thereon, or passing under or by the same, and in such manner as to prevent the falling of any material that may be used or deposited thereon.

Scaffold, or staging, swung or suspended from an overhead support more than twenty (20) feet from the ground or floor shall have, where practicable, a safety rail properly bolted, secured and braced, rising a [at] least thirty-four (34) inches above the floor or main portion of such scaffolding or staging, and extending along the entire length of the outside and ends thereof, and properly attached thereto, and such a scaffolding or staging shall be so fastened as to prevent the same from swaying from the building or structure.

64. Water pipe, smoke stack tower, etc.] § 5. That any person, firm or corporation in this State, hiring, employing or directing another to perform labor of any kind, in the erecting, repairing, altering or painting of any water pipe, stand pipe, tank, smoke stack, chimney, tower, steeple,

pole, staff, dome or cupola, when the use of any scaffold, staging, swing, hammock, support, temporary platform or other similar contrivance are required or used, in the performance of such labor, shall keep and maintain at all times, while such labor is being performed, and such mechanical device is in use or operation, a safe and proper scaffold, stay, support or other suitable device, not less than sixteen (16) feet or more below such working scaffold, staging, swing, hammock, support or temporary platform, when such work is being performed, at a height of thirty-two (32) feet, for the purpose of preventing the person or persons performing such labor, from falling in case of any accident to such working scaffold, staging, swing, hammock, support or temporary platform.

65. Flooring—Filling in—Plank over beams, etc.] § 6. All contractors and owners, when constructing buildings in cities, where the plans and specifications require the floors to be arched between the beams thereof, or where the floors of [or] filling in between the floors are fire-proof material or brick work, shall complete the flooring or filling in as the building progresses, to not less than within three tiers or beams below that on which the iron work is being erected. If the plans and specifications of such buildings do not require filling in between the beams or floors with brick or fire-proof material, all contractors for carpenter work in the course of construction shall lay the under flooring thereof or a safe temporary floor on each story as the building progresses to not less than within two stories or floors below the one to which such building has been erected. Where double floors are not to be used, such owner or contractor shall keep planked over the floor two stories or floors below the story where the work is being performed. If the floor beams are of iron or steel the contractors for the iron or steel work of buildings in the course of construction or the owners of such buildings, shall thoroughly plank over the entire tier of iron or steel

beams on which the structural iron or steel work is being erected, except such spaces as may be reasonably required for the proper construction of such iron or steel work and for the raising and lowering of materials, to be used in the construction of such buildings, or such spaces as may be designated by the plans and specifications for stairways and elevator shafts.

69. Penalties—Recovery of damages—Attorney's fees.] § 9. Any owner, contractor, sub-contractor, foreman or other person having charge of the erection, construction, repairing, alteration, removal or painting of any building, bridge, viaduct or other structure within the provisions of this act, shall comply with all the terms thereof, and any such owner, contractor, sub-contractor, foreman or other person violating any of the provisions of this act shall upon conviction thereof be fined not less than $25, nor more than $500 or imprisoned for not less than three months nor more than two years or both fined and imprisoned in the discretion of the court.

And in case of any such failure to comply with any of the provisions of this act, the Director of Labor may, through the State's Attorney, or any other attorney in case of his failure to act promptly, take the necessary legal steps to enforce compliance therewith.

If it becomes necessary, through the refusal or failure of the State's Attorney to act, for any other attorney to appear for the State in any suit involving the enforcement of any provision of this act, reasonable fees for the services of such attorney shall be allowed by the board of supervisors or county commissioners in and for the county in which such proceedings are instituted.

For any injury to person or property, occasioned by any wilful violations of this act, or wilful failure to comply with any of its provisions, a right of action shall accrue to the party injured, for any direct damages sus-

tained thereby; and in case of loss of life by reason of such wilful violation or wilful failure as aforesaid, a right of action shall accrue to the widow of the person so killed, his lineal heirs or adopted children, or to any other person or persons who were, before such loss of life, dependent for support on the person or persons so killed, for a like recovery of damages for the injuries sustained by reason of such loss of life or lives. As amended by act approved July 11, 1951. L.1951, p. 1309.

APPENDIX C (b).

Constitution of Illinois 1870, Article III.

ARTICLE III.

Distribution of Powers.

The powers of the government of this state are divided into three distinct departments—the legislative, executive and judicial; and no person, or collection of persons, being one of these departments, shall exercise any power properly belonging to either of the others, except as hereinafter expressly directed or permitted.

APPENDIX C (c).

Constitution of the United States, Amendment XIV, Section 1.

AMENDMENT [XIV].

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.